

The House Committee on Ways and Means offers the following substitute to HB 353:

A BILL TO BE ENTITLED
AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to change and add provisions relative to enforcement and collection of taxes; to provide for offsets against unclaimed property; to provide for the notification, attachment, and seizure of funds held by financial institutions; to provide for the service of summons of garnishment; to provide for the service of subpoenas; to change certain provisions regarding the attachment, priority, and perfection of state tax liens; to change certain provisions regarding the disclosure of confidential tax information; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising paragraph (4) of subsection (a) of Code Section 48-2-8, relating to the state revenue commissioner's authorization to issue subpoenas, as follows:

"(4) Subpoena the attendance of witnesses and require the production of books, papers, records, and documents and, subject to the rights of the taxpayer as to rights of privacy guaranteed to ~~him~~ the taxpayer by the Constitution and laws of this state, may examine such items and the books, records, inventories, or business of any taxpayer or of any fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer or knowledge pertinent to the investigation or inquiry. The subpoena may be served by the commissioner or the commissioner's authorized representative to a person at the person's last known address by registered or certified mail or statutory overnight delivery, return receipt requested. If a person refuses to accept service of a subpoena by registered or certified mail or statutory overnight delivery, the subpoena shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the subpoena. This liability shall be

1 paid upon notice and demand by the commissioner or the commissioner's delegate and
2 shall be assessed and collected in the same manner as other taxes administered by the
3 commissioner."

4 SECTION 2.

5 Said title is further amended by revising Code Section 48-2-15.1, relating to the disclosure
6 of confidential taxpayer information or records, as follows:

7 "48-2-15.1.

8 Notwithstanding Code Section 48-7-60 and the prohibition against disclosure of income
9 tax information contained in any report or return under that Code section and
10 notwithstanding any other provision of law to the contrary, confidential taxpayer
11 information or records with respect to which the taxpayer has granted express written
12 authorization to the commissioner or an officer or employee of the department may be
13 disclosed to or discussed with another party."

14 SECTION 3.

15 Said title is further amended in Code Section 48-2-55, relating to attachment and
16 garnishment, by revising paragraph (2) of subsection (b) and by adding a new subsection to
17 read as follows:

18 "(2) The commissioner or ~~his~~ the commissioner's authorized representative may use
19 garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the
20 state which are imposed by this title or which the commissioner or the department is
21 responsible for collecting under any other law. Garnishment may be issued by the
22 commissioner or ~~his~~ the commissioner's authorized representative against any person
23 whom ~~he~~ the commissioner believes to be indebted to the defendant or who has property,
24 money, or effects in ~~his~~ such person's hands belonging to the defendant. The summons
25 of garnishment shall be served by the commissioner or ~~his~~ the commissioner's authorized
26 representative, shall be served at least 15 days before the sitting of the court to which the
27 summons is made returnable, and shall be returned to either the superior court or the state
28 court of the county in which the garnishee is served. The commissioner or ~~his~~ the
29 commissioner's authorized representative shall enter on the execution the names of the
30 persons garnished and shall return the execution to the appropriate court. All subsequent
31 proceedings shall be the same as provided by law regarding garnishments in other cases
32 when judgment has been obtained or execution issued. In addition to any other methods
33 of service, the summons of garnishment may be served by the commissioner or the
34 commissioner's authorized representative to the garnishee by registered or certified mail
35 or statutory overnight delivery, return receipt requested. Either the return receipt

1 indicating receipt by the garnishee or the envelope bearing the official notification from
2 the United States Postal Service of the garnishee's refusal to accept delivery of such
3 registered or certified mail or statutory overnight delivery shall be filed with the clerk of
4 the court in which the garnishment is pending. If statutory overnight delivery was
5 accomplished through a commercial firm as provided under paragraph (1) of subsection
6 (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the
7 envelope bearing the official notification of such commercial firm of the garnishee's
8 refusal to accept delivery shall be filed with the clerk of the court in which garnishment
9 is pending. If a garnishee refuses to accept service of a summons of garnishment by
10 registered or certified mail or statutory overnight delivery, the summons of garnishment
11 shall be served by the commissioner or the commissioner's authorized representative
12 under any other method of lawful service and the garnishee shall be personally liable to
13 the commissioner for a sum equal to the actual costs incurred to serve the summons of
14 garnishment. This liability shall be paid upon notice and demand by the commissioner
15 or the commissioner's delegate and shall be assessed and collected in the same manner
16 as other taxes administered by the commissioner."

17 "(g) If an apparent owner or other person entitled to any property paid or delivered under
18 Article 5 of Chapter 12 of Title 44, the 'Disposition of Unclaimed Property Act,' is subject
19 to a writ of execution issued under Code Section 48-3-1, the commissioner may offset the
20 execution against the property. Prior to the offset, the commissioner shall notify the
21 apparent owner or other person entitled to the property in writing at the owner's last known
22 address as shown on the records of the department that the state intends to offset the
23 person's delinquent state tax liability against the person's interest in or claim to the
24 property."

25 SECTION 4.

26 Said title is further amended by revising subsections (a), (e), and (f) and by adding a new
27 subsection in Code Section 48-2-56, relating to creation and priority of tax liens, to read as
28 follows:

29 "(a) Except as otherwise provided in this Code section, liens for all taxes due the state or
30 any county or municipality in the state shall arise as of the time the taxes become due and
31 unpaid and all tax liens shall ~~cover~~ attach to all property in which the taxpayer has any
32 interest from the date the lien arises until such taxes are paid."

33 "(e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title,
34 relating to certain income taxes, shall:

35 (1) Arise and ~~cover~~ attach to all property of the taxpayer as of the time a tax execution
36 for these taxes is entered upon the general execution docket; and

(2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt.
~~Before the lien provided for in this subsection shall attach to real property it shall be recorded in the county where the real property is located.~~

(f) The lien for taxes imposed by the provisions of Article 5 of Chapter 7 of this title, relating to withholding taxes, shall:

(1) Arise and attach to all property of the defaulting employer or other person required to deduct and withhold on the date of the assessment of the taxes by operation of law or by action of the commissioner;

(2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt; and

(3) Not be superior to the lien of a subsequent bona fide purchaser or lender for value recorded prior to the time the execution for the tax has been entered on the general execution docket in the office of the superior court of the county in which the property affected is located.

~~Before the lien provided for in this subsection shall attach to real property it shall be recorded in the county where the real property is located."~~

"(i) Before the liens provided for in this Code section for taxes imposed by the provisions of Article 2 of Chapter 7 of this title, relating to certain income taxes, and Article 5 of Chapter 7 of this title, relating to withholding taxes, shall attach to real property in which the taxpayer has any interest, the execution for these taxes shall be recorded with the clerk of the superior court of the taxpayer's last known residence as shown on the department's records or the county in which the taxpayer may own property. It shall then be the duty of the clerk of the superior court of the county in which the tax execution for these taxes or any other taxes due the state is filed to enter the execution upon the lien records of the superior court of said county, with the execution being recorded in the same manner and form as prescribed by the general laws of the State of Georgia relating to executions issued by a superior court of this state and processed and transmitted electronically for inclusion in the state-wide uniform automated information system for real and personal property records, as provided in Code Section 15-6-97. When the execution has been issued, docketed, and included in the state-wide uniform automated information system as required in this subsection, the lien shall be a perfected lien upon all property and rights to property of the taxpayer, both real and personal, in each county of this state."

SECTION 5.

Said title is further amended by adding a new Code section to read as follows:

"48-2-62.

(a) As used in this Code section, the term:

1 (1)(A) 'Account' means:

2 (i) Any funds from a demand deposit account, checking account, negotiable order of
3 withdrawal account, savings account, time deposit account, money market mutual
4 fund account, or certificate of deposit account;

5 (ii) Any funds paid towards the purchase of shares or other interest in a financial
6 institution, as defined in subparagraphs (B) and (C) of paragraph (3) of this
7 subsection; and

8 (iii) Any funds or property held by a financial institution, as defined in subparagraph
9 (D) of paragraph (3) of this subsection.

10 (B) 'Account' does not include:

11 (i) An account or portion of an account to which an obligor does not have access due
12 to the pledge of the funds as security for a loan or other obligation;

13 (ii) Funds or property deposited to an account after the time that the financial
14 institution initially attaches the account;

15 (iii) An account or portion of an account to which the financial institution has a
16 present right to exercise a right of setoff;

17 (iv) An account or portion of an account that has an account holder of interest named
18 as an owner on the account; or

19 (v) An account or portion of an account to which the obligor does not have an
20 unconditional right of access.

21 (2) 'Account holder of interest' means any person, other than the obligor, who asserts an
22 ownership interest in an account.

23 (3) 'Financial institution' means:

24 (A) A depository institution, as defined in the federal Deposit Insurance Act under 12
25 U. S. C. Section 1813(c), having Georgia deposits greater than \$15 billion according
26 to the Federal Deposit Insurance Corporation Summary of Deposits annual report as of
27 June 30; or

28 (B) A benefit association, insurance company, safe deposit company, money market
29 mutual fund, or similar entity doing business in this state that holds property or
30 maintains accounts reflecting property belonging to others.

31 (4) 'Obligor' means a person whose property is subject to a state tax lien.

32 (b) The commissioner may request from a financial institution information and assistance
33 to enable the department to enforce the tax laws of the state.

34 (c)(1) Not more frequently than once every calendar quarter or as otherwise agreed to
35 by the financial institution, the commissioner may request from a financial institution the
36 information set forth in paragraph (2) of subsection (d) of this Code section concerning
37 any obligor who is delinquent in the payment of taxes.

(2) A request for information by the commissioner under paragraph (1) of this subsection shall:

(A) Contain the full name of the obligor and any other names known to be used by the obligor and the social security number, federal employer identification number, or other taxpayer identification number of the obligor; and

(B) Be transmitted to the financial institution in machine readable form.

(d)(1) Within 30 days of a request from the commissioner, or as otherwise agreed to by the financial institution, for information under subsection (c) of this Code section, the financial institution shall, with respect to each obligor whose name the commissioner submitted to the financial institution, submit a report to the commissioner.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the report described in paragraph (1) of this subsection shall contain, to the extent reflected in the records of the financial institution:

(i) The full name of the obligor;

(ii) The address of the obligor;

(iii) The social security number, federal employer identification number, or other taxpayer identification number of the obligor;

(iv) Any other identifying information needed to ensure positive identification of the obligor; and

(v) For each account of the obligor, the obligor's account number and balance.

(B) For a financial institution that submits reports through the federal parent locator service under 42 U.S.C. Section 666(a)(17), the report described in paragraph (1) of this subsection may contain information that meets the specifications required for financial data match reports under the federal parent locator service.

(3) A report submitted under paragraph (1) of this subsection shall be provided to the commissioner in machine readable form.

(4) The commissioner shall pay the financial institution a reasonable fee, not to exceed the actual costs incurred by the financial institution to comply with the requirements of this Code section.

(5) The commissioner may institute civil proceedings to enforce this Code section.

(e) A financial institution that complies with a request from the commissioner by submitting a report to the commissioner in accordance with subsection (d) of this Code section is not liable under state law to any person for any:

(1) Disclosure of information to the commissioner under this Code section; or

(2) Other action taken in good faith to comply with the requirements of this Code section.

(f) A financial institution furnishing a report to the commissioner under this Code section is prohibited from disclosing to an obligor that the name of that obligor has been received from or furnished to the commissioner.

(g)(1)(A) The commissioner may send notice of a tax lien to any financial institution that the commissioner reasonably believes holds property subject to a tax lien.

(B) The notice to be sent under this paragraph shall be provided by:

(i) First-class mail, under the postmark of the United States Postal Service, at the address designated for this purpose by the financial institution or, if no address has been designated, to the principal office of the financial institution;

(ii) An electronic format agreed on by the commissioner and the financial institution; or

(iii) Any other reasonable manner as agreed on by the commissioner and the financial institution.

(2) The notice to be sent by the commissioner to a financial institution under paragraph (1) of this subsection shall contain:

(A) The name of the obligor;

(B) The amount of the tax lien;

(C) The last known address of the obligor;

(D) The social security number, federal employer identification number, or other taxpayer identification number of the obligor; and

(E) A notice to immediately seize and attach from one or more accounts held by the financial institution in the name of the obligor an aggregate amount equal to the lesser of the amounts in all accounts or the amount of the tax lien.

(h)(1) On receipt of the notice described in subsection (g) of this Code section, the financial institution promptly shall seize and attach from one or more of the accounts of the obligor held by the financial institution an aggregate amount equal to the lesser of:

(A) The total of the amounts in all the accounts of the obligor held by the financial institution; or

(B) The amount stated in the notice sent under subsection (g) of this Code section.

(2) Within 15 days after the financial institution receives the notice directing it to seize and attach accounts of the obligor, the financial institution shall send notice to the commissioner, in the manner specified in subsection (g) of this Code section, specifying the aggregate amount held under this subsection.

(3)(A) The financial institution may assess a fee against the accounts of the obligor in addition to the amount identified in the notice under subsection (g) of this Code section.

(B) In the case of insufficient funds to cover both the fee and the amount identified in the notice under subsection (g) of this Code section, the financial institution may first

deduct and retain the fee from the amount seized and attached as provided in this Code section.

(4) The financial institution shall not be held liable to any person, including the commissioner, the obligor, or any account holder of interest, for wrongful dishonor or for any other claim relating to the seizure and attachment of an account or other actions taken in compliance with this Code section.

(i)(1) Within ten business days after the commissioner has received notice from the financial institution under paragraph (2) of subsection (h) of this Code section, the commissioner shall send a notice to the obligor, by regular mail, to the obligor's last known address.

(2) The notice shall contain the following information, to the extent known by the commissioner:

(A) The address of the commissioner;

(B) The telephone number, address, and name of a contact person at the office of the commissioner;

(C) The name and social security number, federal employer identification number, or other taxpayer identification number of the obligor;

(D) The address of the obligor;

(E) For each account of the obligor, the name of the financial institution that has seized and attached amounts as required by this Code section;

(F) The total amount of the tax lien owed by the obligor;

(G) The date the notice is being sent;

(H) A statement informing the obligor that the commissioner has directed the financial institution to seize and attach the amount of the tax lien owed by the obligor from one or more of the accounts of the obligor and, on subsequent notice by the commissioner, to forward the amount to the commissioner; and

(I) A statement informing the obligor that, unless a timely challenge is made by the obligor or an account holder of interest under subsection (l) of this Code section, the commissioner shall notify the financial institution to forward the amount seized and attached by the financial institution to the commissioner.

(3) The commissioner shall not be obligated to send the notice described in paragraphs (1) and (2) of this subsection if, prior to the time that the notice must be sent, the commissioner and the obligor agree to an arrangement under which the obligor will pay amounts owed under the tax lien.

(j)(1) If a timely challenge is not made by the obligor or an account holder of interest under subsection (l) of this Code section, the commissioner shall send a notice to the

1 financial institution, in the manner specified in subsection (g) of this Code section,
2 directing the institution to:

3 (A) Forward the amount seized and attached by the financial institution to the
4 commissioner;

5 (B) Reduce the amount seized and attached by the financial institution to a revised
6 amount as stated, forward the revised amount to the commissioner, and release the
7 excess amount; or

8 (C) Release the amount seized and attached by the financial institution.

9 (2) The commissioner may send the notice described in paragraph (1) of this subsection
10 before the time for filing a timely challenge under subsection (l) of this Code section on
11 agreement among the commissioner, the obligor, and, if the commissioner is aware of an
12 account holder of interest, the account holder of interest.

13 (k) The commissioner shall apply the amount seized and forwarded by the financial
14 institution to the obligor's tax lien obligation.

15 (l)(1) An obligor or an account holder of interest may challenge the actions of the
16 commissioner under this Code section by filing a motion with the commissioner within
17 30 days of the date of the notice sent under paragraph (1) of subsection (i) of this Code
18 section.

19 (2) An obligor or an account holder of interest may challenge the actions of the
20 commissioner based on:

21 (A) A mistake in the identity of the obligor;

22 (B) A mistake in the ownership of the account;

23 (C) A mistake in the contents of the account; or

24 (D) A mistake in the amount of the lien obligation due.

25 (3) An obligor or an account holder of interest may not challenge the actions of the
26 commissioner based on a mistake or error in the original tax assessment underlying the
27 tax lien against the obligor.

28 (4) The commissioner's denial of an obligor or an account holder of interest's motion
29 challenging the actions of the commissioner under this Code section is not a contested
30 case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

31 (m)(1) The commissioner may withdraw the notice to seize and attach accounts by
32 sending notice to the financial institution, in the manner specified in subsection (g) of this
33 Code section, directing the financial institution to release the attachment on the accounts.

34 (2) If a determination is made by the commissioner that the account or accounts of the
35 obligor should not have been held, the commissioner shall notify the financial institution,
36 in the manner specified in subsection (g) of this Code section, to release the amount
37 seized and attached by the financial institution.

(3) If a determination is made by the commissioner, pursuant to a challenge under subsection (l) of this Code section, to reduce the amount seized and attached by the financial institution, the commissioner shall notify the financial institution, in the manner specified in subsection (g) of this Code section, to revise the amount as stated, forward the revised amount to the commissioner, and release the excess amount seized and attached by the financial institution.

(4)(A) If a challenge made under subsection (l) of this Code section is denied by the commissioner, the commissioner shall notify the financial institution, in the manner specified in subsection (g) of this Code section, to forward the amount seized and attached by the financial institution to the commissioner.

(B) A financial institution that complies with a notice from the commissioner sent under this Code section is not liable under state law to any person for:

- (i) Any disclosure of information to the commissioner under this Code section;
- (ii) Seizing and attaching any amounts from an account or sending any amount seized and attached by the financial institution to the commissioner; or
- (iii) Any other action taken in good faith to comply with the requirements of this Code section.

(n) A financial institution has no obligation to reimburse fees assessed as a result of the commissioner instituting an action under this Code section or as otherwise permitted by law or authorized by contract.

(o) This Code section may not be construed to prohibit the commissioner from collecting taxes due from the obligor in any other manner authorized by law."

SECTION 6.

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Section 5 of this Act shall become effective on July 1, 2008.

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.